

STATEMENT OF FACTS

I, Benjamin M. Jacobs, being first duly sworn, depose and state as follows:

AFFIANT'S BACKGROUND

1. Your affiant, Benjamin Jacobs, is a Special Agent assigned to the Federal Bureau of Investigation (FBI) and have been so employed since 2010. I have been trained as an investigator in both Criminal, National Security, International Counterterrorism, matters. I have had both training and experience in the investigation of computer-related crimes. Currently, I am a tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a special agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.
2. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, my review of documentation and publicly available information, and my conversations with other law enforcement officers. Where the actions, statements, and conversations of others are recounted herein, they are recounted in substance and part, unless otherwise indicated. Where the affidavit contains items in quotation marks, those quotations are based on agent notes and may not be completely verbatim. Because this affidavit is being submitted for the limited purpose of supporting a criminal complaint, I am setting forth only those facts and circumstances necessary to establish probable cause for the issuance of the requested complaint. Unless otherwise indicated, all written and oral statements referred to herein are set forth in substance and in part, rather than verbatim.

PURPOSE OF AFFIDAVIT

3. This affidavit is in support of a criminal complaint charging KELLY O'BRIEN, with violations of 18 U.S.C. § 1512(c) (obstructing an official proceeding); 18 U.S.C. §§ 1752(a)(1) and (2) (restricted building and grounds), and 40 U.S.C. § 5104(e)(2) (disorderly conduct).

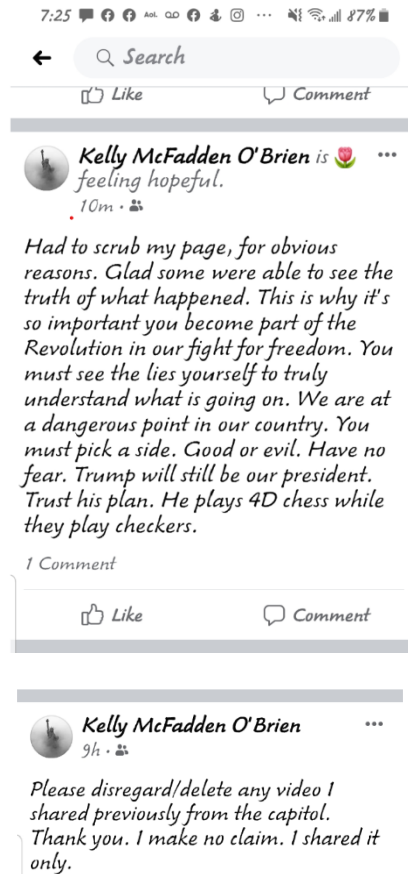
FACTUAL BASIS SUPPORTING PROBABLE CAUSE

4. The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.
5. On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the

vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 PM. Shortly thereafter, by approximately 1:30 PM, the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

6. As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.
7. At such time, the certification proceedings were still underway, and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 PM, individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.
8. Shortly thereafter, at approximately 2:20 PM, members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 PM. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.
9. During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.
10. On January 14, 2021, an online complaint was submitted to the FBI Tip Line by a person (WITNESS #1, whose identity is known to law enforcement) who claimed that he/she had seen a video posted on January 6, 2021, via Facebook Live, on Kelly McFadden O'Brien's Facebook account from inside the U.S. Capitol building. In addition to this video, WITNESS #1 also claimed that he/she saw three other videos that O'BRIEN posted to her Facebook page which appear to show her leading up to her entry into the U.S. Capitol. WITNESS #1, a Facebook friend of O'BRIEN, described the first two videos as appearing to be taken from the lawn in front of the U.S. Capitol. According to WITNESS #1, who is familiar with O'BRIEN's voice, O'BRIEN could be heard narrating the videos, and she appeared to be at the U.S. Capitol event by herself. WITNESS #1 described the third video he/she watched as one in which O'BRIEN was standing underneath the inauguration stage/scaffolding as she stated that she was with the crowd, asked viewers to "Pray for us," and appeared to be gathering the courage to move forward.

11. According to WITNESS #1, he/she also viewed O'BRIEN's Facebook account on January 7, 2021, and observed the following posts, which WITNESS #1 captured, and subsequently provided to the FBI. In one post, in an apparent attempt to distance herself from her earlier posts on January 6, 2021, O'BRIEN urges others to "Please disregard/delete any video I previously shared from the capital [sic]...I make no claim. I shared it only." In another post, O'BRIEN remarks, "Had to scrub my page, for obvious reasons."



12. On January 14, 2021, the FBI received an anonymous tip regarding a video posted to O'BRIEN's Facebook page. On February 5, 2021, WITNESS #1 was shown this video, and he/she positively identified it as the third video (referenced above) that he/she had watched O'BRIEN broadcast on January 6, 2021, on O'BRIEN's Facebook page via Facebook Live. In the video, O'BRIEN, who WITNESS #1 identifies as the narrator, appears to be underneath the inauguration scaffolding in front of the U.S. Capitol. O'BRIEN is standing in a group of people, to include the subject later identified as Jacob Chanseley (a/k/a Jacob Angeli, a/k/a "Q Anon Shaman"), and states, "we're getting gassed and rubber bullets. We're under Joe fake Biden Inaugural steps that he was supposed to be the fake president in. we're probably about 20 feet to 40 feet from the Capitol doors. Some really brave patriots here. I'm right in the thick of it, following them up. . . I am in the front line, not the front line, but not too far back." Below is a screen capture from the video:

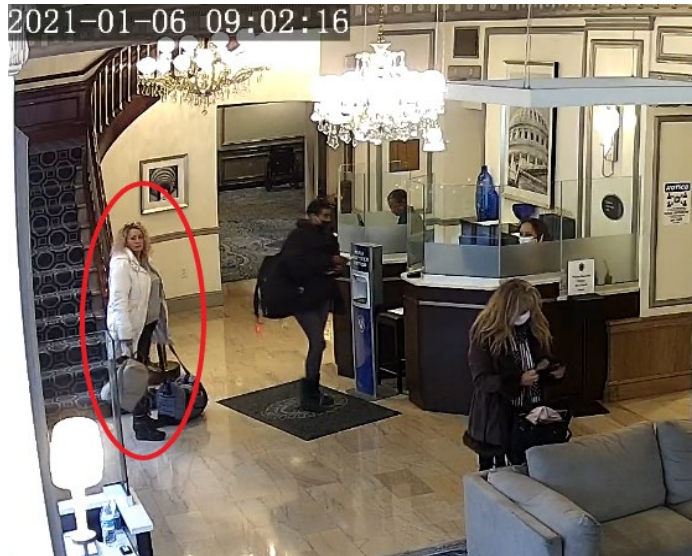


13. The FBI continued to receive anonymous leads/tips regarding posts to O'BRIEN's Facebook page. Below are two posts submitted:

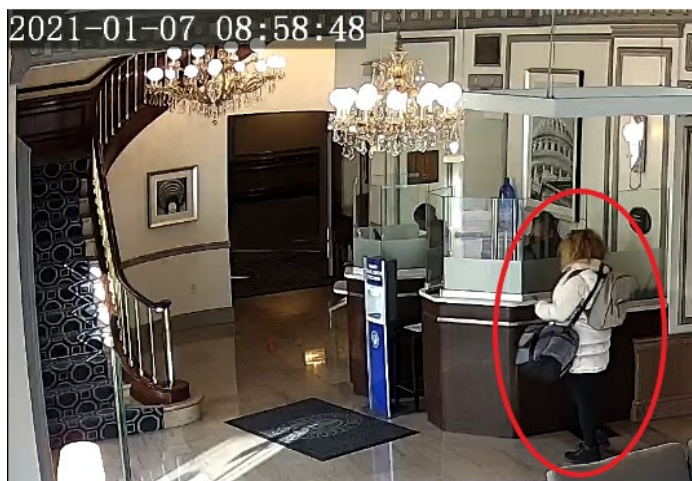


14. Lawfully obtained guest records from the Phoenix Park Hotel, which is located four blocks from the United States Capitol, showed O'BRIEN stayed at the hotel from January 6, 2021 to January 7, 2021. Hotel records also showed O'BRIEN made the reservation on December 22, 2020 via online reservation application/website. She checked in on January 6, 2021 at approximately 11:12 a.m.

15. Surveillance video footage captured inside the Phoenix Park Hotel on January 6, 20201 showed a white female, matching O'BRIEN's physical description enter the hotel lobby at approximately 9:01 a.m. carrying a gray backpack and wearing a white thigh length winter coat with a hood. On January 7, 2021, Phoenix Park Hotel front desk surveillance footage shows the same woman, wearing the exact same white coat and carrying the same gray backpack conduct a transaction at the desk and exit the hotel at approximately 8:59 a.m. Hotel records show O'BRIEN checked out of the hotel at approximately 9:01 a.m. on January 7, 2021.



O'Brien entering Phoenix Park Hotel Lobby, 01/06/2021, 9:02 am

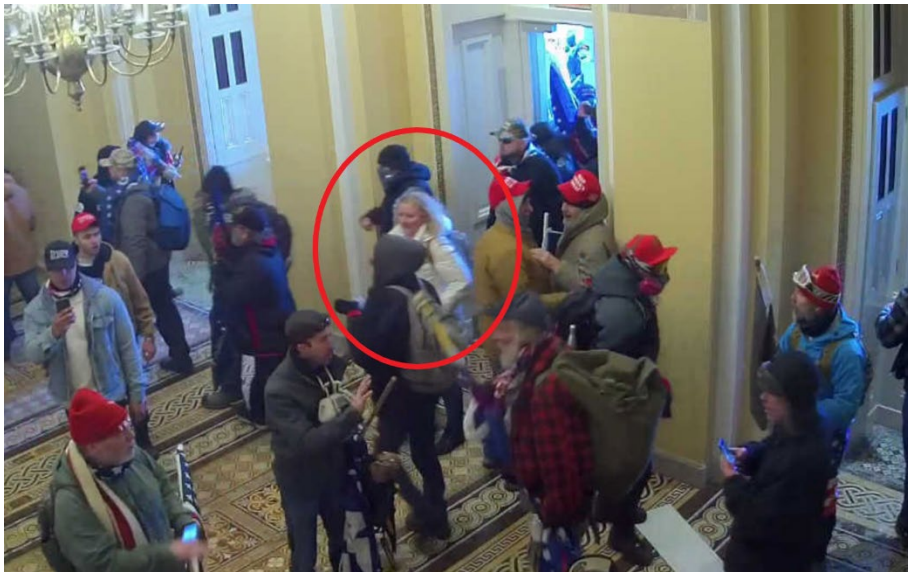


O'Brien checking out of Phoenix Park Hotel, 01/07/2021, 8:58 am

16. According to records obtained through a search warrant which was served on Google, a mobile device associated with Google Account ID 60428058828 was present at the U.S.

Capitol on January 6, 2021 for the time period of 2:17 p.m. to 2:37 p.m. Google Account ID 60428058828 is associated with O'BRIEN.

17. Law enforcement subsequently identified surveillance footage from inside the U.S. Capitol building that captures O'BRIEN wearing a white thigh-length winter coat with a hood and carrying a gray backpack walking through the Capitol on January 6, 2021.



O'Brien Entering US Capitol, Senate Wing Door 2:20pm



O'Brien Moments After Entry, 2:20pm



O'Brien Near US Capitol Crypt, 2:25 pm



O'Brien Near US Capitol Memorial Door, 2:31 pm

18. On January 18, 2021, your affiant made contact with O'BRIEN at her residence. O'BRIEN stated that she did not want to talk to your affiant and directed your affiant to leave the premises.
19. On March 30, 2021, the FBI executed a search warrant at O'BRIEN's residence. During the search, O'BRIEN's husband advised that the white winter coat O'BRIEN was wearing on January 6, 2021 was hung in the main floor powder room with her purse, which contained a canister of bear spray/pepper spray. Apparently after January 6, 2021, the bear spray went off, contaminating the powder room and lower level of the house. The pepper oil of the spray was all over the walls in the powder room and ruined the white coat. O'BRIEN then threw the white coat away, and her husband repainted the powder room. An inspection of

the powder room revealed orange stains on the window shade and door jam, confirming O'BRIEN's husband's recollection of the incident. O'BRIEN's husband confirmed that the white coat O'BRIEN was wearing in a photograph from the Phoenix Park Hotel Lobby was the same white coat that she had thrown away following the bear spray incident. Pursuant to the search warrant, the FBI also located and seized the backpack that O'BRIEN was wearing at the Phoenix Hotel and at the U.S. Capitol.

20. In addition, the FBI seized O'BRIEN's cellular telephone, which was the same device that Google records identified as having been inside the Capitol on January 6, 2021. Notably, there were no text messages before February, 2021 on O'BRIEN's cellular telephone although the FBI was able to locate videos and photograph near the Capitol on January 6, 2021 on her cellular telephone. In one of these videos, the Capitol is visible in front of O'BRIEN as she films the rioters. O'BRIEN states words to the effect of "to give you a little perspective, this was all barricaded, and patriots have stormed the Capitol, broke down the barriers and there are men with guns up there, so I'm thinking I might stay a little bit back." O'BRIEN continues "right before I got here, patriots stormed the Capitol, broke down the barriers, because once again, we own these buildings, we own this city. Our taxes bought and paid for this city. Alright, I'm getting a little braver."
21. On March 30, 2021, a search warrant was served on Facebook, Inc., for O'BRIEN's Facebook account. On May 17, 2021, Facebook provided records relating to O'BRIEN's Facebook account.
22. According to the records received from Facebook, O'BRIEN was a member of several Facebook groups, including groups titled "STOP THE STEAL 2020"; and "Impeach Governor Wolf." On November 21, 2020, O'BRIEN wrote in the "Impeach Governor Wolf" group "We will not be controlled. It is illegal. We have a duty to Our Country and Our Constitution. TO NOT COMPLY! I would rather die on my feet than live on my knees. PATRIOTS UNTIED [sic]"
23. On November 6, 2020, O'BRIEN posted, "DO NOT GIVE UP THE GOOD FIGHT! Elections will not be stolen in this country. Not My Country. What it took to accomplish THE MIRACLE known as THE UNITED STATES OF AMERICA is amazing. Fight for this. Fight for your freedom. Fight for future generations. It's up to you. DO NOT GIVE UP! We will win this. Truth always prevails."
24. On November 8, 2020, O'BRIEN posted "STOP WATCHING CORPORATE MEDIA OUTLETS. AND YES, THIS INCLUDES FOX NEWS. There is so much information out there that validates Trump's fraud claims and they rarely get reported by mainstream media, including Fox News. There are many, many reasons for this. But that's for another day. Do not give up or give in. So many lawsuits are being filed on Monday and are going to The Supreme Court. The media doesn't decide who our President is. We do. Relax and enjoy your weekend. Unless you've committed voter fraud. Then you need a lawyer and should prepare yourself to spend 10 years in prison. Hope the money was worth it. YOUR PRESIDENT IS FIGHTING FOR YOU! KEEP FIGHTING FOR HIM!"

25. Also on November 8, 2020, O'BRIEN commented on a Facebook post, "Nothing is official. Stealing is different than winning. The Supreme Court will determine who the winner is. Not corporate media. Don't give up. This is only just beginning". She also commented on another Facebook post, "So many lawsuits are being filed on Monday. Doesn't surprise me at all that the media declared Sleepy Joe the winner on a Saturday. This is going to the Supreme Court and the truth will come out. I have faith that people will be prosecuted and will go to jail."
26. On November 20, 2020, O'BRIEN commented on a post from November 5, 2020, stating "The only difference is, 80 million and more of us will be there. And we will fight."
27. On November 25, 2020, O'BRIEN wrote "Say it out loud and put it into existence. On January 20th of 2021 The President of The United States of America is Donald J. Trump." That same day, O'BRIEN commented on another post from the day prior, and stated "Don't worry, Howie. The O'Brien armory is well stocked. Just in case. These idiot's don't even realize how hard it is to buy bullets. They're gone. We ain't worried. Lol."
28. On November 26, 2020 O'BRIEN replied to a comment on a post from November 19, 2020. O'BRIEN wrote "We do not riot. We fight. We are an Army of Patriots. You will know us when you see us. There will be no ambiguity. Prepare yourself."
29. On November 28, 2020, O'BRIEN "checked in" to Harrisburg, PA, and posted that she was "Heading to The #stopthesteal rally in Harrisburg today. Looking forward to joining my fellow Patriots in the good fight. Our President. Our Constitution. Our Country. Stopthesteal.us". "O'BRIEN also posted a picture and wrote "Thank you, Oathkeepers, for keeping us safe."
30. On December 4, 2020, O'BRIEN posted on Facebook "FREEDOM is yours for the taking. But you have to be willing to fight for it. No one but you can earn your freedom. You must demand it. You must stand up for it. You must be brave. You may never get this chance again. BE COURAGEOUS" and "Must watch! This explains how "some" of the fraud was accomplished. It is terrifying and heartbreaking. #stopthesteal" and "Here's more proof. Rigged election!"
31. On December 9, 2020, O'BRIEN posted on Facebook:

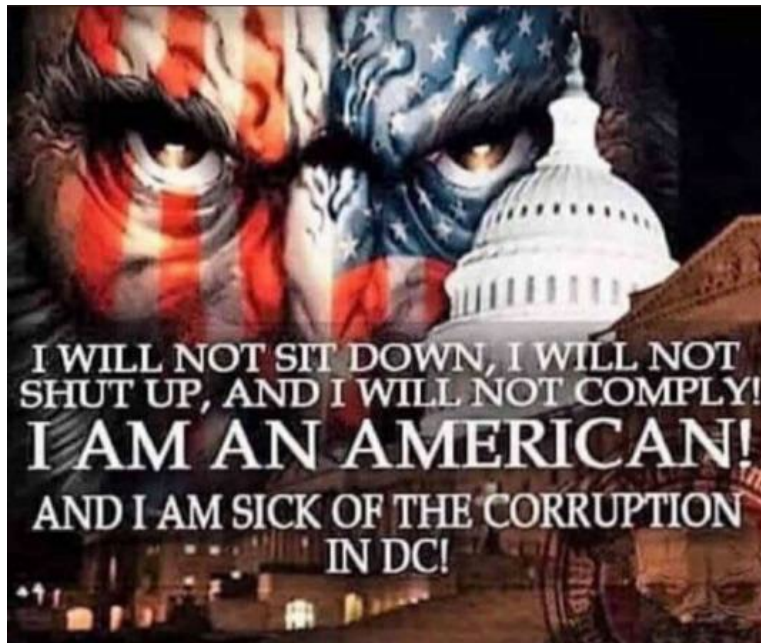


32. On December 12, 2020, O'BRIEN posted about being in Washington, D.C. and being walked back to her hotel by the Proud Boys. Based on my training and experience, I know that the Proud Boys is a nationalist organization with multiple U.S. chapters and potential activity in other Western countries. The group describes itself as a "pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western Chauvinists." Proud Boys members routinely attend rallies, protests, and other First Amendment-protected events, where they sometimes engage in violence. On December 12, 2020, a pro-Trump rally occurred in D.C. and open source reporting indicates that the Proud Boys engaged in acts of violence in Washington, D.C. on or around December 12, 2020.
33. On December 13, 2020, O'BRIEN posted on Facebook "March for Trump. We have The Spirit of 1776 in our hearts. Rise up Patriots. You are being Called." O'BRIEN also posted pictures from the rally on her Facebook page.
34. On December 16, 2020, O'BRIEN posted the following image:



35. On December 19, 2020, O'BRIEN posted: "CALLING ALL PATRIOTS! Be in Washington D.C. January 6th. This wasn't organized by any group. DJT has invited us and it's going to be "wild"."
36. Also on December 19, 2020, O'BRIEN posted the following to Facebook:
- "Warning. Beware elite establishment. We are ready and we are going to fight you with everything we have. You will not win. We will triumph over your evil."
 - "We are coming for you Antifa.... If you plan on going to D.C. January 6th, which I highly recommend, it will be one of the greatest experiences of your life and I believe the duty of all able Patriots. However, it is not for the faint of heart at night. Violence can and will break out. You won't expect it. Antifa are cowards and they try to go after the vulnerable. When I was there last week there were tons of Proud Boys protecting Patriots. But they are not everywhere. So be very careful if you go out at night. Proud Boys generally have on black and yellow. But it's hard to see that at night. As you can see from this video, it's hard to tell who is who. And the scariest part is that d.c. police, for whatever reason, don't get involved. Even though they are nearby, do not expect protection from them."
 - "Now a reason why you need to go to D.C. January 6th anyway. Be Brave. Have Courage. It feels fantastic."
 - "WE ARE IN A BATTLE between GOOD and evil. Make no mistake about that. Elders are cheering us on and believe that WE ARE GOING TO BE THE GREATEST GENERATION in their lifetime. And they lived through WWII. Are you going to fight or are you weak. Let us know now. WE NEED PATRIOTS! WE NEED FREEDOM FIGHTERS! NOW!"

37. On December 26, 2020, in response to another user posting “You can vote your way into socialism but you have to shoot your way out of it!” O’BRIEN responded “We might have to.” That same day, O’BRIEN posted the following image to Facebook:



38. On January 1, 2021, O’BRIEN posted as her status on Facebook, “On January 6th you will wonder? How? Thank the Patriots. The 3 percent fought for Freedom. You did nothing.” Based on my training and experience, I know that the reference to the “3 percent” refers to the myth that only three percent of American colonists took up arms against the British during the American Revolution.
39. On January 3, 2021, O’BRIEN posted on Facebook “So the good news is that no matter what, WE WIN. No matter what. By any means necessary. The bad news is, this may not go smoothly. Be prepared.” and “Be there! You don’t want to miss this.” She also posted, “Where we go one, we go all. You are either with us or against us. “We will not bend, we will not break, we will never give up”. – DJT”
40. On January 7, 2021 through January 9, 2021, after entering the Capitol during the January 6, 2021 riot, O’BRIEN posted on Facebook:
- Had to scrub my page, for obvious reasons. Glad some were able to see the truth of what happened. This is why it’s so important you become part of the Revolution in our fight for freedom. You must see the lies yourself to truly understand what is going on. We are at a dangerous point in our country. You must pick a side. Good or evil. Have no fear. Trump will still be our president. Trust his plan. He plays 4D chess while they play checkers.
 - And I still have a lot of people to block. MAGA only from now on.

- No regrets....♥
- MAGA please let me know immediately through dm or text when traitors are posting on my wall so I can block them. I don't check comments that often. Will be deleting a lot today. Can't see everyone from phone. Have to go to desktop.
- Truth. Please watch. TRUMP HAS NOT CONCEDED. I COMPLETELY AGREE WITH EVERYTHING HE SAYS BUT THAT.
- There is no grey area anymore. It's time to pick a lane. Are you on the side of freedom? Do you understand The Constitution? Do you understand how many people died for you? Patriot or coward? Who are you?
- God sent his mightiest warriors to this battle. Why be afraid? He sent you.

41. On January 7, 2021, O'BRIEN exchanged direct messages with another user ("USER-1")

O'Brien: That never happened. There were no cops anywhere. But that girl got shot so there had to have been somewhere. I was one of the first 50 to 75 people up those stairs They did not stop us. They weren't even there. They let us in basically. By patriot cops

O'Brien: They are trying to get ahead of murdering that girl.

User-1: Or were they? All the cops seemed friendly and relaxed. Thinking back too much so. I think we may have got played.

O'Brien: Maybe. Thanks for the advice. I scrubbed the video. Thank you!!! Do you think i will get arrested?

User-1: The guys in the tower. I want to know who they are. Agent provocateur? C-a?

User-1: I dont know just don't speak of it on social media. In fact [provides cell number]

O'Brien: I will call you tomorrow on my way home. So exhausted. I need to tell you everything clearly. Step by step. They're was some misinformation inside.

User-1: I don't know what happened at the doors. But im real curious about guys in the tower and the guy with green shirt on

O'Brien: I saw everything except when I was under the scaffolding Talk tomorrow

O'Brien: Didn't see the door either

User-1: I mean the entrance point

O'Brien: It was already broken into when I got there...by minutes

User-1: Hmm

O'Brien: Me too. Glass windows and door open. We were played right? You might be right.

On January 8, 2021, User-1 and O'Brien continued to exchange messages, including the following:

User-1: Did he just concede?

O'Brien: No. False flag. He's in Texas. Green screen. He didn't concede. He always said he would transition power back to the people. Never said bidens name. Don't panic

O'Brien: I will do more research

User-1: Is Trump addressing the nation tonight?

O'Brien: He's buying time so they stop the 25th amendment stuff. Trying to remove him. This way they think he's conceding.

O'Brien: He never said biden. Never congratulated. Technically every 4 years is a new administration even if it's the same president.

O'Brien: I know. Everything is happening according to Q plan. So scared.

42. A review of O'BRIEN's Facebook records reveals numerous postings and statements indicative of a belief in the "Q Anon" conspiracy theory, including numerous posts referring to "Q" "wwg1wga" and "the plan." Based on my training and experience, I know that QAnon is a sprawling, discredited, anti-establishment conspiracy theory that originated in online message boards by an anonymous individual known as "Q." Q claims to be a high-level government official with a Q clearance and access to classified information. Central to the QAnon conspiracy theory is the false belief that the world is run by a cabal of Satan-worshipping pedophiles and child-traffickers (allegedly largely comprised of prominent Democratic politicians, so-called "Deep State" government employees, journalists, and Hollywood elite) and that former President Trump is secretly working with Q and others to take down the cabal. QAnon followers are waiting for "The Storm," which generally refers to a day of violence which will result in mass arrests, military trials, and executions of the members of the cabal. Following the November 3, 2020 election, many QAnon adherents began pushing false and discredited theories regarding voter fraud. Prominent QAnon adherents exhorted others to "trust the plan," believing that President-Elect Biden's victory is illusory and part of a convoluted plan by Q and others to reveal the crimes of the cabal to the world, resulting in President Trump securing a second term.
43. Based on the foregoing, your affiant submits that there is probable cause to believe that KELLY O'BRIEN violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct,

in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

44. Your affiant submits there is also probable cause to believe that KELLY O’BRIEN violated 40 U.S.C. §§ 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.
45. Your affiant submits that there is also probable cause to believe that KELLY O’BRIEN violated 18 U.S.C. § 1512(c), which makes it a crime to corruptly obstruct, influence, or impeded (or attempt to do so) any official proceeding, including congressional proceedings.



BENJAMIN M. JACOBS
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 12 day of August 2021.

MAGISTRATE G. MICHAEL HARVEY